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RECORDATION NO. 9337

Filed 1423

MICHAEL J. TARPLEY

DIAL DIRECT (212) 309-6000

JAN 15 1985 - 10 50 AM

January 15, 1985

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Secretary:

As attorneys for Connell Leasing Company, we enclose one original and three photocopies of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

This documents, within the classification scheme promulgated as 49 C.F.R. § 1177.1, is Amendment No. 1 to an equipment lease dated as of March 1, 1978, which was filed and recorded with the ICC on April 24, 1978, and assigned recordation number 9337; thus the Amendment is a secondary document.

The equipment covered by the document presented for filing herewith is the same equipment as covered by the primary document previously filed and recorded with you.

A fee of \$ 10 .00 is enclosed. Please return all copies not needed for recordation to the person presenting this letter and its enclosures for filing.

A short summary of the document to appear in the index follows:

Amendment No. 1, effective January 3, 1985, to Equipment Lease with Recordation No. 9337 dated as of March 1, 1978, and covering up to one hundred ten (110) rotary dump gondola cars.

5-015A067

Very truly yours,

No.

Date JAN 15 1985

Fee \$ 10.00

ICC Washington, D.C.

MJT:sdw
Enclosures

Michael J. Tarpley

100 OF 100
JAN 15 10 42 AM '85
MOTOR CARRIER UNIT

Handwritten signature: Philip R. Schwartz

1/15/85

Interstate Commerce Commission
Washington, D.C. 20423

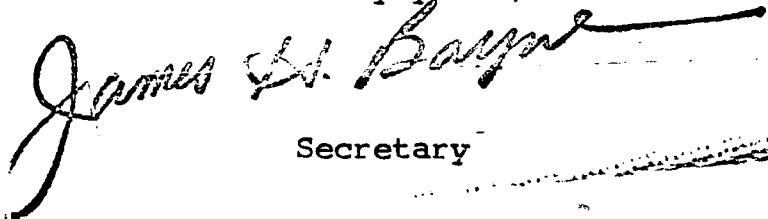
OFFICE OF THE SECRETARY

Michael J. Tarpley
Morgan Lewis & Bockius
101 Park Avenue
New York, N.Y. 10178

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/15/85 at 10:50am and assigned re-recording number(s). 9337-B

Sincerely yours,


Secretary

Enclosure(s)

RECORDATION NO. 9337 B Filed 1425

JAN 15 1985 - 10 50 AM

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 1

Effective January 3, 1985

to

EQUIPMENT LEASE

Dated as of March 1, 1978

Between

CONNELL LEASING COMPANY,
A DIVISION OF CONNELL RICE & SUGAR CO., INC.,
Lessor

and

CONSUMERS POWER COMPANY,
Lessee

(Consumers Power No. 78-1)
(110 Rotary Dump Gondola Cars)
(105 Cars remaining)

Amendment No. 1, effective January 3, 1985, to Equipment Lease dated as of March 1, 1978 (the "Lease") between Connell Leasing Company, a division of Connell Rice & Sugar Co., Inc. (the "Lessor"), and Consumers Power Company (the "Lessee").

WHEREAS, the Lessor and the Lessee entered into the Lease (the terms defined in the Lease being used herein with the same meanings), which Lease was filed and recorded with the Interstate Commerce Commission on April 24, 1978 at 11:45 a.m., Recordation No. 9337;

WHEREAS, the Lessor has agreed to pay approximately \$315,000 [REDACTED] on or ^{after}~~before~~ January 3, 1985 to finance the cost of recoating the Equipment, on condition that the Lease is amended as provided herein; and

BPO
hc

WHEREAS, the Lessee has agreed to amend the Lease as provided herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants of the parties hereto and for other good and valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the Lessor and the Lessee do hereby agree as follows:

Provided that on or ^{after}~~before~~ January 3, 1985 the Lessor pays approximately \$315,000 [REDACTED] to finance the cost of recoating the Equipment, the Lessor and

BPO
hc

the Lessee hereby agree that the Lease shall, as of January 3, 1985, be amended as follows:

1. The Table of Contents of the Lease is hereby amended by changing the references in the headings for Sections 18 and 18.1 from "Renewal Options" to "Renewal Option".

2. Section 2.1(b) of the Lease is hereby amended to read in its entirety as follows:

(b) Fixed Rental. For each Item of Equipment leased hereunder, forty consecutive semiannual installments of rental, payable in arrears, consisting of (1) thirty semiannual installments, each in an amount equal to the sum of (A) 4.214264% of the Purchase Price of such Item of Equipment (the "Original Fixed Rental") plus (B) in the case of installments 14 through 30, an additional amount equal to 0.705515% of the Purchase Price of such Item of Equipment and (2) followed by ten semiannual installments (installments 31 through 40), each in an amount equal to 4.781554% of the Purchase Price of such Item of Equipment (the rental payable pursuant to clauses 1(B) and 2 above being hereinafter referred to as the "Additional Rental", and the Additional Rental together with the Original Fixed Rental being hereinafter collectively referred to as the "Fixed Rental").

3. Section 2.3 of the Lease is hereby amended by changing the reference therein from "July 3, 1993" to "July 3, 1998."

4. Sections 2.4(b), (c) and (d) of the Lease are hereby amended by changing the references therein from "Fixed Rental" to "Original Fixed Rental" and Section 2.4(d) of the Lease is hereby further amended by inserting after "Assignee," in the second line, the following language: "the entire amount of each installment of Additional Rental and".

5. Section 3 of the Lease is hereby amended by changing the reference therein from "July 3, 1993" to "July 3, 1998".

6. The final paragraph of Section 14.2 of the Lease is hereby amended by changing the reference in the first line thereof from "Fair Market Value" to "Fair Rental Value" and the reference in the third line thereof from "Section 18.1(b)" to "Section 14.5".

7. Section 14 of the Lease is hereby amended by inserting after Section 14.4 a new Section 14.5 which shall provide as follows (the following language is an adaptation of the language contained in Section 18.1(b) of the unamended Lease which no longer properly belongs in such Section because of the elimination by this Amendment No. 1 of the Fair Rental Value renewal options):

14.5. Fair Rental Value The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease. If within 10 days after the Lessor's request for such a determination, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Item of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 20 days, then the term "Appraiser" shall mean an appraiser chosen by the American Arbitration Association. The Appraiser shall be instructed to make such determination within a period of 20 days following appointment, and shall promptly communicate such

determination in writing to the Lessor and the Lessee. The Appraiser's determination of such Fair Rental Value shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

8. The heading of Section 18 of the Lease is hereby amended by changing the reference therein from "Renewal Options" to "Renewal Option".

9. Section 18.1 of the Lease is hereby amended to read in its entirety as follows:

18.1. Renewal Option. Provided that the Lessee is not in default hereunder, the Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for one additional renewal term of five years upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the semiannual Fixed Rental payable for and during any such renewal term shall be an amount equal to 2.717359% of the Purchase Price of such Items of Equipment. The renewal term, if elected, shall commence immediately upon the expiration of the original term on July 3, 1998. The Lessee shall give the Lessor written notice of any such election 180 days prior to the commencement of the renewal term provided for in this Section 18.1. If the Lessee does not exercise its renewal option provided for in this Section 18.1, the Lessee shall return each Item of Equipment to the Lessor in accordance with Section 13 hereof and with an average of at least 7 mils thickness remaining in the coatings.

10. Section 18.3 of the Lease is hereby amended by changing the reference therein from "the then current renewal term" to "the renewal term".

11. Schedule C attached hereto hereby replaces the original Schedule C to the Lease and all references to Schedule C

in the Lease shall be deemed references to the attached replacement Schedule C.

The Lease is hereby mutually confirmed and acknowledged to continue in full force and effect, as amended hereby.


In consideration of the execution and delivery of this Amendment No. 1 by the Lessee, and provided that this Amendment No. 1 becomes effective according to its terms, the Lessor hereby agrees to stand ready to accommodate the Lessee in funding any appropriate second coating of the Equipment (estimated to be in 1990 or 1991) in a manner mutually agreeable to the Lessor and the Lessee.

IN WITNESS WHEREOF, the parties hereto do hereby execute and deliver this Amendment No. 1.

CONNELL LEASING COMPANY, A
DIVISION OF CONNELL RICE &
SUGAR CO., INC.

[CORPORATE SEAL]

ATTEST:


Secretary

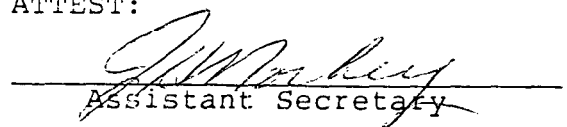
By


Its President

CONSUMERS POWER COMPANY

[CORPORATE SEAL]

ATTEST:


Assistant Secretary

By


Its Vice President

CONSUMERS POWER CO.	
APPROVED	DATE
FINANCE <u>WNS</u>	<u>12/20/84</u>
LEGAL <u>Ju-L</u>	<u>12/20/84</u>

STATE OF NEW JERSEY)
)SS
COUNTY OF UNION)

On this 28 day of December, 1984, before me personally appeared Grover Connell, to me personally known, who being by me duly sworn, says that he is the President of CONNELL LEASING COMPANY, A DIVISION OF CONNELL RICE & SUGAR CO., INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Natalie D. Jureman
Notary Public

[NOTARIAL SEAL]

My commission expires:

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 23, 1987

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

On this 24th day of December, 1984, before me personally appeared R. J. Gulevsk, to me personally known, who being by me duly sworn, says that he is the VICE PRESIDENT of CONSUMERS POWER COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Beverly A. Avery
Notary Public Beverly A. Avery

[NOTARIAL SEAL]

My commission expires: January 16, 1985

Schedule C to Lease

CONSUMERS POWER COMPANY

SCHEDULE OF CASUALTY VALUES
(Revised effective 1/3/85)

The Casualty Value for an Item of Equipment shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite the dates in the following schedule:

<u>Fixed Rental Payment Date on which Casualty Value is Paid (Payment in Addition to Rent Payment)</u>	<u>Percentage of Purchase Price (as defined in the Participation Agreement) Payable as Casualty Value</u>
July 3, 1985	90.13901%
January 3, 1986	87.91459
July 3, 1986	87.01674
January 3, 1987	84.42261
July 3, 1987	83.30107
January 3, 1988	80.34967
July 3, 1988	79.01377
January 3, 1989	75.78897
July 3, 1989	74.27288
January 3, 1990	70.79644
July 3, 1990	69.04113
January 3, 1991	65.29750
July 3, 1991	63.33094
January 3, 1992	59.64945
July 3, 1992	57.74191
January 3, 1993	54.20333
July 3, 1993	52.34550
January 3, 1994	49.12070
July 3, 1994	47.30015
January 3, 1995	43.90759
July 3, 1995	41.78568
January 3, 1996	38.20671
July 3, 1996	35.74617
January 3, 1997	31.95906
July 3, 1997	29.12260
January 3, 1998	25.10869
July 3, 1998	21.86525

(Consumers Power
No. 78-1, revised eff. 1/3/85)